

House Bill 554  
March 9, 2011  
Presented by Bob Lane  
House Appropriations Committee

Mr. Chairman and committee members, I am Bob Lane, Chief Legal Counsel of the Montana Department of Fish, Wildlife & Parks (FWP). I am here to provide testimony in opposition to HB554, as written.

We are all too aware of how frustrating the wolf issue remains to be. However, HB554 does not move toward any solution, it will only exacerbate the problem. HB554 tries to create an interstate compact to manage wolves, but in doing so nullifies the federal Endangered Species Act, and at the same time manages to violate the supremacy clause and the compact clause of the U.S. Constitution. FWP cannot support HB554 for all of these reasons.

HB554 makes criminals of state employees who adhere to the U.S. Constitution, federal wildlife law, Montana's Constitution and Montana's state wildlife laws. HB554 does far more than criminalize wolf management law, it makes criminals of state and local employees who work to protect the wildlife heritage of our state.

HB554 tries to nullify an area of federal law, the Endangered Species Act, that the U.S. Supreme Court has consistently upheld and determined preempts state law. Typically, states adopt compacts against a backdrop of federal law that specifically allows for the compact. States derive their power to enter compacts from the U.S. Constitution, Article I, Section 10, clause 3. The same clause however, restricts that power by requiring congressional approval of a compact and preventing a compact that usurps federal law or that addresses an area of law that is already preempted by federal law. "The Framers sought to ensure that Congress would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority." *Cuyler v. Adams* (449 U.S. 433 (1981)).

Further, as written, HB554 makes it a crime for "anyone to interfere with their enjoyment of the rights and freedoms guaranteed by current wolf management laws." This language does not set out those rights and freedoms, thus making it difficult not only to enforce, but also for wildlife professionals to adhere to. In Article VII, the compact states that it is not intended to "authorize any party state to regulate or prohibit the killing of wolves."

Thus by trying to supersede the federal Endangered Species Act (ESA), HB554 would make FWP ineligible for any federal funding from the U. S. Fish and Wildlife Service (USFWS). The federal ESA requires cooperation between the USFWS and state fish and wildlife agencies. FWP, through memorandums of understanding with the USFWS, has managed wolves for almost five years. HB554 would not only make this a crime, it would take away the management authority Montana has and rest that authority with the three states, Wyoming, Idaho, and Montana.

For the above reasons, FWP does not support HB554.